1969 *Present :* Samerawickrame, J., and Pandita-Gunawardene, J.

JAITHUN UMMA, Appellant, *and* H. B. SAMARANAYAKE, Respondent

S. C. 355/66 (F)—D. C. Kandy, 9338/MR

Delict—Wrongful seizure of property—Extent of liability for damages—Execution proceedings—Seizure of property which did not belong to judgment-debtor—Effect when owner of the property had acted in collusion with the judgment-debtor—Civil Procedure Code, s. 219.

[1] *(1936) 1. C. L. J. 14.*

Defendant had, in an earlier action, caused the Fiscal to seize the house of the plaintiff in execution of a writ obtained by him against the plaintiff's husband B. In the present action the plaintiff claimed damages from the defendant on the ground of wrongful seizure of her property. The evidence showed that the plaintiff had induced a belief in the defendant that the house which was seized belonged to her husband B. The plaintiff had thus contributed in no small measure to her house being seized by the Fiscal.

***Held*, that the plaintiff was not entitled to claim damages. "Where it appears that the party whose property has been seized has in a manner led the judgment-creditor to form a reasonable belief that the property belongs to the judgment-debtor, he cannot be heard to complain that the seizure was not authorised."**

Ramanathan Chetty v. Meera Saibo Marikar (32 N. L. R. 193) distinguished.

APPEAL from a judgment of the District Court, Kandy.

C. Ranganathan, Q.C., with *W. D. Gunasekera* and *M. T. M. Sivardeen*, for the plaintiff-appellant.

D. R. P. Goonetilleke, with *C. Dahanayake*, for the defendant-respondent.

Cur. adv. vult.

July 25, 1969. PANDITA-GUNAWARDENE, J.—

This is an appeal by the plaintiff from the judgment of the District Judge, Kandy, dismissing her claim to damages in Rs. 10,000 for wrongful seizure of her land, house, furniture and fittings in execution of a writ against her husband Badurdeen in D. C. Kandy Case MR. 8387.

The history of the matter is this. In 1960 the defendant agreed to complete the unfinished work of a house for the plaintiff's husband Badurdeen who represented to the defendant that he was the owner (*vide* D. 1). On the completion of the work there was a sum of Rs. 2,481/71 due to the defendant. The defendant filed action against Badurdeen for this sum; and of consent decree was entered on 1.2.62 in favour of the defendant for Rs. 1,700 with a concession of six months for payment. Badurdeen neglected to satisfy the consent decree. Thereafter on 21.2.63 the defendant moved the Fiscal to seize the property of Badurdeen (*vide* D8, D9 and D10). The request to the Fiscal was to seize the building, furniture and equipment; (the translation D9 is incorrect for the original in Sinhalese which I have perused refers to the house only and not the land). Mistakenly the Fiscal had seized the land in addition to the house and its furniture.

The issues in the case are confined to the seizure of the house and its furniture and fittings. The seizure in regard to the land can therefore be kept out of consideration.

Admittedly the house, the subject of the seizure was on the land gifted to the plaintiff in 1950. The defendant's contention however is that he honestly believed that the house belonged to Badurdeen, the plaintiff's husband ; and in that belief the seizure was effected.

The argument for the plaintiff was that the question of honest belief does not arise. It was said that once the defendant caused the Fiscal to seize the house of the plaintiff upon a writ to seize the house of another, the plaintiff can recover damages without proof of malice. Reliance was placed on the case of *Ramanathan Chetty v. Meera Saibo Marikar* [1]. The facts of that case were that the judgment-creditor (respondent to the appeal) moved the Fiscal to seize certain quantities of tea belonging to a Firm which were at particular named premises. The application was made on 22.6.25. But prior to this date, viz., 16.6.25 the Firm had conveyed the tea to a third party (the appellant in that case) and the third party had been debited with that amount in account ; and in pursuance of an agreement between the Firm and the third party on 16.6.25 the tea had been removed to the premises named. It was at these premises that the tea was seized by the Fiscal at the instance of the judgment-creditor. The third party successfully sued and obtained damages for wrongful seizure in the District Court.

The Supreme Court set aside the judgment of the District Judge. Appeal was then taken to the Privy Council where the judgment of the District Judge was restored.

32 N. L. R. 193 contains the report of the judgment of the Privy Council. It is I think necessary to quote at some length from this judgment. Lord Russell of Killowen who delivered the Privy Council judgment said (*ibid* at pages 194 and 195) :

> " The basis of his (District Judge's) judgment was that the respondent had acted maliciously in causing the appellant's goods to be seized, the malice being, in his opinion, established by the fact that the respondent had intentionally made a false allegation in order to obtain the issue of the warrant, viz., that the tea had been removed to Sea Street *after* the insolvency.
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> The judgment of the District Judge was set aside in the Supreme Court, and judgment was entered for the present respondent with costs there and below. The foundation of the Supreme Court's decision was that no malice on the part of the present respondent had been proved. In the opinion of their Lordships the facts of the present case relieve the appellant from any necessity to establish malice on the part of the respondent.
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> Assuming, in the respondent's favour, that he had grounds for suspecting the conduct of the firm and the appellant, and that in obtaining the issue of the search warrant he acted in good faith and without malice, nevertheless, the fact remains that he was the cause of the appellant's property being wrongfully seized.

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[1] *(1930) 32 N. L. R. 193.*

A distinction must be drawn between acts done without judicial sanction and acts done under judicial sanction improperly obtained. If goods are seized under a writ or warrant which authorized the seizure, the seizure is lawful, and no action will lie in respect of the seizure, unless the person complaining can establish a remedy by some such action as for malicious prosecution.

If, however, the writ or warrant did not authorize the seizure of the goods seized, an action would lie for damages occasioned by wrongful seizure without proof of malice.

These propositions not only state the law of this country upon the subject but they are supported by decisions in the Courts of countries where the Roman-Dutch law prevails.

Authorities of this class which may be referred to are *Hart v. Cohen*, a decision of the Supreme Court of the Cape of Good Hope, and *De Alwis v. Murugappa Chetty*, a decision of the Supreme Court of Ceylon.

In the case before the Board, once it was shown as it has been to their Lordships' satisfaction, that the respondent was the cause of the appellant's goods having been seized by the Fiscal under a warrant which only directed him to seize property of the firm, the case against the respondent was complete, and he became liable to the appellant in damages without proof of malice."

Learned Counsel contended that the case cited, the 32 N. L. R. case, if I may so refer to it, is on all fours with the present case : and as the writ did not authorise seizure of the house seized, an action for damages lay without proof of malice. A close examination of the facts of this case and a comparison with the facts of the 32 N. L. R. case relied upon by counsel shows that there is a difference of a fundamental nature. In this case there is evidence accepted by the learned District Judge that the plaintiff's conduct coupled with document D1 would have reasonably induced a belief in the defendant that the house belonged to Badurdeen.

The defendant's evidence is that D1 was given by Badurdeen : the plaintiff was present at the time and she advanced Rs. 500 to commence the work. D1 is in the following terms :

"I, Mohamed Badurdeen of Illukwatte, Kadugannawa, the *owner* of the uncompleted building situated at Illukwatte, Kadugannawa do hereby entrust Mr. H. B. Samaranayake of Illukwatte, Kadugannawa to complete the unfinished work and for which work I do hereby promise and undertake to pay him after the completion of the work and have this day paid him a sum of rupees five hundred only (Rs. 500).

Sgd. Illegibly
(on ten cent stamp).

Defendant further stated that Badurdeen used to inspect the work once a week. The proctor's clerk who prepared D1 corroborated the defendant. The plaintiff denied that D1 was signed by her husband Badurdeen in her presence. She also denied the payment of Rs. 500 and that she agreed to pay Rs. 1,500 for the completion of the work. She added that until the day of the seizure she was unaware of a case between the defendant and her husband where judgment was entered against her husband for Rs. 1,700. At the claim inquiry following the seizure, the plaintiff had given an entirely contrary version. At the claim inquiry she admitted the payment of Rs. 500 (D2); and that she had agreed to pay Rs. 1,500 (D3). She further added that her husband and she supervised the construction work (D5).

The learned District Judge has rejected the plaintiff's evidence and has in my opinion rightly concluded, "It was not unreasonable for the defendant to be under the impression that although the land belonged to the plaintiff, her husband was the actual owner of the house as stated in D1."

It has been submitted for the plaintiff that once Badurdeen denied that he owned any property on being examined under Section 219 of the Civil Procedure Code, the defendant should have made inquiry in respect of the ownership of the house before any further step was taken by him. I am not prepared to accept this submission. D1 clearly describes Badurdeen as the owner of the house. It was signed in the presence of the plaintiff who cannot plead ignorance in regard to it. The defendant was entitled to consider the statement in D1 as adequate without further inquiry.

In this state of the facts as found by the learned District Judge whose finding I see no reason to disturb, I cannot say that the defendant was the cause of the plaintiff's house being seized by the Fiscal.

The plaintiff herself could in the circumstances of this case, be said to have contributed in no small measure for the defendant's action in seizing the house. This is the important difference between the 32 N. L. R. case and the present case.

It is my opinion that upon a fair construction of the facts of a case where it appears that the party whose property has been seized, has in a manner led the judgment-creditor to form a reasonable belief that the property belongs to the judgment-debtor, he cannot be heard to complain that the seizure was not authorised.

Much was attempted to be made of the fact that the plaintiff's house was "invaded" on the last day of the Ramzan fast and the day before the Ramzan festival; that this was deliberately done in order to cause humiliation to the plaintiff, a Muslim lady. There is no evidence to substantiate the suggestion that the defendant fixed this day on purpose.

According to the defendant this was the day arranged by the Fiscal and he accompanied the Fiscal. The only comment that can be made is that it was unfortunate that this day so coincided with the Ramzan fast.

In the view I have taken there can be no question of a wrongful act in derogatory of the rights of the plaintiff on the part of the defendant. Realistically speaking "the boot is on the other leg." For the reverse seems to be the truth.

The conduct of the plaintiff indeed appears to me to be conduct wanting in honour and integrity, and I regret to say indicative of a disposition to defraud the defendant of what is justly due to him. Plaintiff and her husband Badurdeen have joined hands to enrich themselves unjustly at the expense of the defendant.

For these reasons which I have endeavoured to state, the appeal is dismissed with costs.

SAMERAWICKRAME, J.—I agree.

Appeal dismissed.